

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK F. SPANGLER,

Defendant.

NO. 2:12-cr-00133-RSM-1

**United States' Local Civil Rule 67
Motion to Disburse Funds from
the Registry of the Court to Pay
Assessment and Restitution**

**Note for Motion Calendar:
Friday, April 1, 2016**

The United States of America moves under Local Civil Rule 67 (incorporated by Local Criminal Rule 1(a)) for an order directing the Clerk of Court to disburse \$290,745.56, plus accrued interest, from the Registry of the Court, to pay the special assessment and the restitution owing to Defendant Mark F. Spangler's investment fraud victims in this case. The requested order would implement the terms of the parties' Court-approved Stipulation, which calls for releasing such funds from the Registry upon the conclusion of Mr. Spangler's direct appeal. The Ninth Circuit has affirmed Mr. Spangler's conviction and issued its Mandate last month, so the time is ripe to disburse the funds to the victims.

BACKGROUND

In November 2013, a jury convicted Mr. Spangler of 32 felony counts, including wire fraud, money laundering, and investment advisor fraud. Criminal Judgment, dkt. no. 165. In March 2014, the Court sentenced Mr. Spangler to 192 months in prison, followed by three years of supervised release, and ordered him to pay a \$3,200 special assessment and \$19,881,461.04 in restitution to the victims of his investment fraud scheme. *Id.* Mr. Spangler timely appealed. Notice of Appeal, dkt. no. 166.

While the appeal was pending, the United States began enforcing Mr. Spangler's sentence, including his obligations to pay the special assessment and restitution. As part of those enforcement efforts, the United States applied for and obtained a Writ of Garnishment that attached to Mr. Spangler's interest in a retirement plan.¹ Because the retirement plan was in state court receivership proceedings, the amount of Mr. Spangler's interest in the retirement plan had not been determined. See Exhibit B (Receiver's Answer to Writ of Garnishment) at 7. Accordingly, the United States, Mr. Spangler, and the Receiver entered into a Stipulation that called for Mr. Spangler's interest in the retirement plan—as determined in the receivership proceedings—to be deposited into the Registry of this Court, “to be held until such time as Mark Spangler's appeal of his criminal conviction is reviewed by

¹ See *United States v. Spangler, et al.*, Case No. 2:14-cv-01203-RAJ (W.D. Wash.), Writ of Continuing Garnishment for Non-Wages (May 22, 2014), Exhibit A hereto, and Answer for Non-Wages of the Garnishee (May 30, 2014), Exhibit B hereto.

1 the Court of Appeals.”² The Court adopted the parties’ Stipulation and, after
 2 expressly finding that the “United States is entitled to garnish from the
 3 [retirement] [p]lan,” terminated the garnishment action.³
 4

5 On or about March 6, 2015, after the amount of Mr. Spangler’s interest
 6 in the retirement plan was determined in the receivership proceeding, the
 7 Receiver deposited that amount, some \$282,941.90, into the Registry of the
 8 Court, consistent with the Stipulation and Federal Rule of Criminal Procedure
 9 38(e)(2)(C). Declaration of Dawn Fernandez (Fernandez Decl.); U.S. Courts
 10 Case Inquiry Report, Exhibit E hereto. Additional deposits of Mr. Spangler’s
 11 funds, totaling \$7,803.66, increased the principal balance in the Court’s
 12 Registry to \$290,745.56, as of March 14, 2016. *Id.* That principal has
 13 accrued interest of \$93.01, which yields a grand total Registry balance of
 14 \$290,838.57 through March 14, 2016. *Id.* (see “Treasury Registry” line on
 15 page one of Exhibit E). As of March 14, 2016, Mr. Spangler continues to owe
 16 \$1,435.00 of his special assessment and \$19,883,226.03 in restitution.
 17
 18 Fernandez Decl.; Exh. E at 1.
 19

20 Mr. Spangler’s appeal has now concluded. The Ninth Circuit affirmed
 21 his conviction and sentence in January 2016, and issued its Mandate on
 22 February 9, 2016. Dkt. nos. 205 & 206.
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25 ² *United States v. Spangler, et al.*, Case No. 2:14-cv-01203-RAJ (W.D. Wash.),
 26 Stipulation at ¶ 2 (Dec. 11, 2014), Exhibit C hereto.

27 ³ *Id.*, Order Adopting Parties’ Stipulation at ¶¶ 1 & 7 (Dec. 12, 2014), Exhibit
 28 D hereto.

ARGUMENT

Mr. Spangler's appeal concluded last month when the Ninth Circuit issued its Mandate, so the terms of his Court-approved Stipulation with the United States now call for disbursement of the funds in the Registry of the Court. Stipulation at ¶ 2 (Exh. C); Order Adopting Stipulation at ¶ 1 (Exh. D). In approving the Stipulation as a substitute for the pending garnishment action, the Court found that the United States was entitled to garnish Mr. Spangler's interest in the retirement plan to collect the criminal monetary penalties imposed by the judgment in this case. See Exh. D at ¶ 1. Accordingly, the funds paid into the Court's Registry, plus accrued interest, should be disbursed to pay first the balance of Mr. Spangler's special assessment, then to make *pro rata* restitution payments to his victims. See Criminal Judgment [dkt. no. 165] at 7 ("Payments shall be applied in the following order: (1) assessment, (2) restitution principal . . .").

As instructed by Local Civil Rule 67(b), the United States specifies that the principal sum deposited in the Registry is \$290,745.56. Fernandez Decl.; Exh. E. Pursuant to the Stipulation, which was entered in lieu of garnishment, that full amount, \$290,745.56, plus all interest accrued thereon, should be disbursed to the Clerk of Court for payment of the criminal monetary penalties imposed by Mr. Spangler's Criminal Judgment.

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CONCLUSION

For the foregoing reasons, the United States requests an order requiring the Clerk of Court to: (1) disburse from the Registry of the Court the \$290,745.56, plus interest accrued thereon, in the form of a check payable to “United States District Court, Western District of Washington,” referencing Case No. 2:12-cr-00133-RSM-1, and (2) apply the funds to satisfy the special assessment and then to make *pro rata* distributions to Mr. Spangler’s victims, as specified in the Criminal Judgment.

DATED this 21st day of March, 2016.

Respectfully submitted,

ANNETTE L. HAYES
United States Attorney

s/ Kyle A. Forsyth
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CERTIFICATE OF SERVICE

I hereby certify that I am a Paralegal Specialist in the office of the United States Attorney for the Western District of Washington, and am a person of such age and discretion as to be competent to serve papers;

That on March 21, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the attorney(s) of record for the parties:

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That on March 21, 2016, I caused copies of the United States' Motion to Disburse Funds from the Registry of the Court to Pay Assessment and Restitution, Declaration of Dawn Fernandez, Exhibits A-E, and [proposed] Order to be delivered to the Defendant/Judgment Debtor, Mark F. Spangler, by placing a copy of said documents into an envelope marked "Legal Mail – Open in the Presence of the Inmate," in the United States First Class Mail, postage prepaid, addressed as follows:

Mark Spangler
Register No. 42280-086
FCI Lompoc – Federal Correctional Institution
3600 Guard Road
Lompoc, CA 93436

That on March 21, 2016, I caused courtesy copies of the United States' Motion to Disburse Funds from the Registry of the Court to Pay Assessment and Restitution, Declaration of Dawn Fernandez, Exhibits A-E, and [proposed] Order to be delivered to the following, via e-mail:

1 David L. Tuttle: davidt@mlstoll-law.com, *Attorney for Spangler Group,*
2 *Inc. Retirement Plan;*

3 and

4 Andrea D. Orth: aorth@bsss-law.com, *Attorney for KLJ Consulting LLC;*
5 *and Kent L. Johnson, KLJ Consulting LLC's Managing Director, General*
6 *Receiver of The Spangler Group, Inc.*

7
8
9 Dated this 21st day of March, 2016.

10 s/ Dawn H. Fernandez
11 Dawn H. Fernandez, Paralegal
12 United States Attorney's Office
13 700 Stewart Street, Suite 5220
14 Seattle, Washington 98101-1271
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